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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION)
OF THE PARENT-CHILD RELATIONSHIP)
OF C.V., Minor Child,)

and)

APRIL VESSELS, Mother, and)
MICHAEL VESSELS, Father,)

Appellants-Respondents,)

vs.)

TIPPECANOE COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 79A05-0611-JV-654

APPEAL FROM THE TIPPECANOE SUPERIOR COURT

The Honorable Faith Graham, Juvenile Magistrate

Cause Nos. 79D03-0607-JT-147, 79D03-0607-JT-148

April 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

April and Michael Vessels (Mother and Father) appeal the termination of their parental rights to C.V. They claim the evidence is insufficient to demonstrate termination was in C.V.'s best interests and the trial court terminated their rights only because Mother and Father both have mental disabilities. The evidence demonstrates Mother and Father, although capable of complying with services, were unwilling to do so. They continue to live in unsafe housing, they continue to use illegal drugs, they continue to put their needs above C.V.'s needs, they still have sexual boundary issues, and Father still has difficulty managing his anger appropriately. In light of that evidence, termination was not based solely on mental disabilities and termination was in C.V.'s best interests. Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

C.V. was born on September 18, 2005. The next day, hospital staff contacted the Tippecanoe County Department of Child Services ("DCS") because they had concerns about the parents' ability to care for C.V. The initial investigation revealed both parents had mental health issues, Father used alcohol and marijuana, and there was a history of domestic violence between Mother and Father. A child in need of services ("CHINS") detention hearing was held on September 18, and the court placed C.V. in foster care. Parental participation plans were entered and required Mother and Father to complete certain services. Mother and Father did not complete many of the required services, and service providers continued to have concerns regarding the parents' ability to care for C.V.

On July 3, 2006, the DCS filed a petition to terminate Mother's and Father's parental rights. The court heard evidence on September 22, 2006, and entered an order terminating their parental rights on September 29, 2006. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

We will not reverse a termination of parental rights unless it is clearly erroneous. *M.H.C. v. Hill*, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001). When determining whether the evidence supports the findings and judgment, we may not reweigh the evidence or reassess the credibility of the witnesses. *Id.* We will set aside the trial court's findings only if they are clearly erroneous; that is, if the record lacks any evidence or reasonable inferences to support them. *Id.* We consider only the evidence and reasonable inferences therefrom that support the judgment. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998).

A trial court may not terminate a parent's rights unless the State demonstrates by clear and convincing evidence "there is a reasonable probability that: (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child." Ind. Code § 31-35-2-4(b); *see also In re W.B.*, 772 N.E.2d 522, 529 (Ind. Ct. App. 2002) (noting State's burden of proof). In addition, the State must demonstrate termination is in the child's best interests. Ind. Code §§ 31-35-2-4(b)(2)(C), 31-35-2-8.

As of the final hearing on September 22, 2006, Mother was unemployed and receiving Social Security Disability payments. Father was also unemployed and receiving Supplemental Security Income. Father lost his employment at Maize Catering because he did not go to work after staying up all day and night drinking. He also lost employment at Triple X because of poor attendance. Their combined income is approximately \$1,100 per month, and they spend approximately \$200 a month on cigarettes and chewing tobacco. The apartment where they live is not safe for a child. They were offered Section 8 housing, but Mother refused it because she wanted to keep her cat.

Mother and Father smoked marijuana with a friend less than a month before the final hearing. While they smoked in the kitchen, the friend's infant was in the living room. Around the same time, Father traded a Playstation for marijuana. At the time of the final hearing he was taking Campral, a medication that helped lessen his craving for alcohol. Approximately six months before the final hearing, Mother had to call the police because Father took an overdose of her Ambien and she was concerned for him.

Mother called the police to their home in July because she had been "beat up." (Tr. at 11.) Father was arrested and charged with resisting law enforcement. Mother has had to call the police more than ten times for assistance with Father, including a time he was drunk and threatened to kill her. She claims he "has gotten physically violent with me, but it hasn't gotten to the point to where he left bruises on me, he would just push me out of the way." (*Id.* at 15.)

Father's criminal history includes convictions of two counts of driving under the influence, two counts of battery, and one count each of public intoxication, residential entry, criminal mischief, possession of marijuana, possession of paraphernalia, and trespass. At the time of the final hearing herein, the resisting law enforcement charge was pending. Father admits he has "anger issues," (*id.* at 59), and is much more likely to commit crimes when he is drinking alcohol.

In January 2006, although caseworkers asked them to stop, Mother and Father engaged in inappropriate sexual behavior during a case conference. Mother admits performing sexual favors for money with Father's permission because he wants the money for cigarettes and chewing tobacco. Mother and Father have been known to have sex in front of neighbors. When asked whether he and Mother "have some boundary issues with other people and sex and drugs and stuff like that," Father responded "[p]retty much yeah." (*Id.* at 88.)

Mother did not attend her required parenting classes or the Women's Empowerment Group, she has not taken all the drug screens ordered, and at the time of the final hearing, she was not attending AA as required. She missed some appointments with service providers because "I was either mad at them or I didn't want to talk to them." (*Id.* at 16.) When asked why she had not completed the services ordered by the court, Mother testified

because when DCS stepped in to take my daughter they didn't give me a chance to take her home and actually have a chance to mother my daughter so why should I cooperate and do the services that they ask of me to get my daughter back when they didn't let me take my daughter home.

(*Id.* at 31.) Mother claimed she would do better about attending services if the court would give C.V. back to her.

Father acknowledges he was ordered to complete services but did not. He did not complete inpatient treatment at New Directions because Mother did not want him to be away from home. He did not complete Thinking for a Change because he was removed from the program due to poor attendance. He was not able to abstain from drugs and alcohol. When asked why he did not participate in services, Father explained:

Being straight up and honest with you guys, I love all the help you guys are giving me, I need it, but I'm honestly sick of doing things for this. I mean I'm sick of – I'm sorry to say it this way, I hope nobody is offended, but I'm sick of doing things that the State and the Court is telling me, you know what to do. I know if I didn't do it or try or if I didn't get myself into charges and all these charges that have been done they wouldn't have happened, so I mean I'm looking at it that way. I know if I wouldn't have done the stuff then it wouldn't, you know this wouldn't be[.]

(*Id.* at 79-80.) When asked whether he understood that if he had completed services, it would have been easier to have C.V. placed back in their home, he said, “Yes.” (*Id.*) He admitted he had made only about one-third of an effort toward completing services, and he believes the DCS “did the best they could” to help them reunite with C.V. (*Id.* at 81.) He thinks Mother tried harder than he did, but he does not believe either of them tried “as hard as we could.” (*Id.*)

Initially, Mother and Father had visitation with C.V. twice per week, and one person supervised the visitations. However, at a visitation in January 2006, Father “had a blow up during a visit.” (*Id.* at 116.) The supervisor “was unable to leave to get help because Father was throwing things and yelling,” and Father “refused to leave.” (*Id.*)

Thereafter, their visits with C.V. had to be supervised by two people. Mother and Father did not have visits with C.V. from January 30, 2006, until March 14, 2006, because they were considering terminating their parental rights. When they reinitiated visitation in March, Mother and Father concocted a scheme to kidnap C.V. during a visit. Father asked his sister to come with her van to drive them away, but his sister would not participate. Thereafter, they were prohibited from visiting from March 27, 2006, to May 26, 2006, while the supervisors developed a safety plan. Visitation was then reduced to twice per month.

The visitation supervisor, Trisha McGowen, testified at the final hearing that she did not believe C.V. would be safe with Mother and Father. Her experience was that neither of them alone was capable of changing diapers and taking care of C.V.'s basic needs. When asked why she did not believe Mother and Father were appropriate parents, she explained:

The decisions they make, the unsafe situations they continue to put themselves in is a big concern of mine. [Mother] has a hard time remembering to bathe herself so I have a hard time thinking that she would be able to remember to bathe her child. She does not take her medication. And during visits – if they're completely focused on [C.V.], so usually it was best if there was just one of them there, otherwise [Mother] has smacked [C.V.]'s head on the door jam walking through because she wasn't paying attention and she was mad at [Father] so she was rushing out of the door. She had a hard time getting her in and out of clothes, she didn't unbutton things, she didn't – she needed a lot of – it was constant, I was constantly giving them directives.

* * * * *

[T]hey are too focused on each other. If they were arguing during a visit [C.V.] was completely pushed aside, they were worried more about what the other one was doing.

(*Id.* at 122-24.) When asked whether she believed Mother and Father would be a threat “physically, emotionally, mentally, [or] developmentally,” McGowan’s response was “I think all of it.” (*Id.* at 127.) To accommodate Mother’s and Father’s mental limitations, McGowan would not just explain parenting techniques, she would model the behaviors, send written materials home with them, have them write things down, and review materials with them.

Melissa Rice, Mother’s lead community support coordinator, testified her concern was that Mother and Father “make the decisions to put things that they want over the needs of their daughter.” (*Id.* at 137.) She is concerned about their ability to take care of a child because they can barely take care of themselves and they barely meet their own needs for housing and hygiene. She does not believe their home is adequate for a child.

The DCS case manager, Jennifer Herschberger Norris, does not believe the mental health and domestic violence issues between Mother and Father have been, or will be, remedied. Because they consistently put their own needs before C.V.’s needs and “have not participated in the services that were offered to them to help manage their disability and make it so that they can care for [C.V.],” (*id.* at 146), Norris believes C.V.’s best interests would be served by terminating Mother’s and Father’s parental rights. She also believes the parent-child relationship between Mother and Father and C.V. is a threat to C.V. She does not believe C.V. would be physically safe if placed back in the home of Mother and Father.

Norris is not aware of any more services that could be offered to Mother and Father, nor was she aware they had asked for assistance they had not received. Norris

does not believe Mother's poor decision-making is always because of her mental disability:

I know that she has a relatively low IQ, she's got some developmental issues, but she's been given a lot of advice and modeled how to do things and she, as one of the previous witnesses stated, she tends to get mad and decide that she doesn't want to do it the way that she's been shown.

(*Id.* at 149.) Her opinion is that Mother and Father have not improved in the year of services, and therefore C.V.'s best interests would not be served by delaying termination. Mother's failure to complete services, in Norris' opinion, is because of Mother's unwillingness, not inability.

Jodi Allen, the court appointed special advocate for C.V., summarized the concerns she would have if C.V. were placed back in the home of Mother and Father:

The continual sexual boundaries issues are very concerning to me; the use of drug and alcohol that has happened as recently as last week – and with another child present last week; their lack of financial responsibility; [Father]'s anger management issues, which are still demonstrated as recently as the last case conference as was stated before.

(*Id.* at 167.)

The evidence is overwhelming that termination of parental rights is in C.V.'s best interests. Her parents were unwilling to engage in the services necessary to make them safe parents and were unwilling to discontinue their drug use and inappropriate sexual behavior. Accordingly, we find no error in the court's conclusion.

Moreover, because the service providers had multiple serious concerns regarding the ability of Mother and Father to care for C.V., the record does not support their allegation that termination occurred solely because they had mental handicaps. *Cf. Egly*

v. Blackford County Dept. of Public Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992) (“Mental retardation of the parents, standing alone, is not a proper ground for terminating parental rights.”). Father testified he and Mother were unmotivated to complete services, and Norris testified Mother was unwilling, not unable, to make changes.

CONCLUSION

The evidence supports the conclusion C.V.’s best interests would be served by termination of parental rights. In light of the amount of evidence supporting the trial court’s conclusions, it is apparent Mother’s and Father’s rights were not terminated merely because they have mental disabilities. Accordingly, we affirm the judgment of the trial court.

Affirmed.

SHARPNACK, J., and BAILEY, J., concur.